

that intentional lack of candor during the course of a hearing is an independent ground for disqualification. Id.

77. **Public Interest Issues (Issues 4 and 8)**. Throughout this proceeding, both Turro and Weis have testified that they relied on the Mass Media Bureau's 1991 declaratory ruling as sanctioning the arrangement by which Turro provides WJUX essentially all of its programming under cover of a "network affiliation agreement." It is beyond dispute that the Commission cannot issue a declaratory ruling which contravenes the plain meaning of its rules; moreover, to the extent that an individual construes or misconstrues a declaratory ruling to that end, he does so at his peril.

78. Section 74.1232 (d) of the Rules states, in pertinent part, as follows:

An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to... to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to ...business associates.

It is clear that Turro d/b/a Jukebox Radio, in providing virtually all of the WJUX programming pursuant to a network affiliation agreement (or any other type of time brokerage agreement), by virtue of that business relationship with WJUX, cannot rebroadcast the WJUX programming on W232AL and W276AQ. Moreover, the Commission conditioned its declaratory ruling on the specific facts disclosed by Turro; to the extent the operative facts changed or were not fully disclosed to the Commission in the first instance, Turro and Weis are solely responsible for their present predicament. In any event, the extent to which Turro and Weis may have relied on the declaratory ruling would, at most, mitigate the level of any forfeitures to which they may be subject; it would not alter the inescapable conclusion that, under current Commission rules and policies, the WJUX/W232AL/W276AQ operations blatantly violate the notion of FM translators as a secondary service and make a mockery of the Commission's allotment of the WJUX frequency for service to Monticello, New York.

79. Moreover, Turro, d/b/a Bergen County Community Broadcast Foundation, was providing Jukebox Radio programming over WNJW, Franklin Lakes, New Jersey, but took that station silent so he could provide such programming to WJUX, the one difference being that with WJUX Turro could sell commercial advertising which he could not sell on WNJW. Universal submits that this case was never about the public interest, but, rather, the private interest of Turro and MMBI/Weis to enrich themselves by operating WJUX as if were a Bergen County station.

Ultimate Conclusions

80. The Rube Goldberg signal delivery system Turro cobbled together to deliver programming in a circuitous fashion to W276AQ, Fort Lee, New Jersey, via WJUX, Monticello, New York, in order to serve the W276AQ service area in Bergen County, New Jersey---a clear perversion of the translator rules---is a tangible monument to the duplicity of both Turro and Weis/MMBI. Both Turro and MMBI/Weis have, in addition to other numerous and flagrant violations of the Commission's Rules, engaged in an unauthorized transfer of control of WJUX; moreover, both Turro and Weis have engaged in misrepresentation and lack of candor before the Commission and each must be deemed as unqualified to be a Commission licensee. Accordingly, Turro's licenses for W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, and MMBI's permit for WJUX, Monticello, New York, must be revoked.

Respectfully submitted

UNIVERSAL BROADCASTING OF NEW YORK, INC.

By

A handwritten signature in black ink, appearing to read "Roy R. Russo", written over a horizontal line.

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March 13, 1998

CERTIFICATE OF SERVICE

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